

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

SUSANNA MIRKIN and BORIS MIRKIN,  
Individually and on Behalf of All Others  
Similarly Situated,

Plaintiffs,

v.

XOOM ENERGY, LLC and XOOM ENERGY  
NEW YORK, LLC,

Defendants.

No. 18 Civ. 2949 (ARR) (RER)

**DECLARATION OF MICHAEL D. MATTHEWS, JR.  
IN SUPPORT OF DEFENDANTS' MOTION TO STAY  
PROCEEDINGS PENDING RULE 23(f) PETITION AND APPEAL**

Michael D. Matthews, Jr., under penalty of perjury, declares as follows:

1. I am a partner of the law firm McDowell Hetherington LLP, attorneys for Defendants XOOM Energy, LLC and XOOM Energy New York, LLC. I submit this Declaration in support of Defendants' motion to stay proceedings pending resolution of XOOM's Rule 23(f) petition and appeal.

2. Annexed hereto as **Exhibit A** is a true and correct copy of Doc. 152, as downloaded from the Court's Electronic Case Filing system ("ECF"), the Court's Opinion and Order on Plaintiff's Motion for Class Certification, dated August 31, 2023 (the "Class Order").

3. Annexed hereto as **Exhibit B** is a true and correct copy of Doc. 151, as downloaded from ECF, the Court's Opinion and Order on Defendants' Motion for Summary Judgment, dated August 14, 2023 (the "SJ Order").

4. Annexed hereto as **Exhibit C** is a true and correct copy of Defendants' Petition for Permission to Appeal Pursuant to Federal Rule of Civil Procedure 23(f), dated September 14, 2023.

5. Annexed hereto as **Exhibit D** is a true and correct copy of XOOM's proposed Reply in Support of Defendants' Petition for Permission to Appeal Pursuant to Federal Rule of Civil Procedure 23(f), dated October 2, 2023.

6. Annexed hereto as **Exhibit E** is a true and correct copy of the Expert Report of David C. Coleman on Behalf of XOOM Energy, LLC, and XOOM Energy New York, LLC, dated October 31, 2022.

7. Annexed hereto as **Exhibit F** is a true and correct copy of the Rebuttal Report of David C. Coleman on Behalf of XOOM Energy, LLC, and XOOM Energy New York, LLC, dated November 4, 2022.

8. Annexed hereto as **Exhibit G** is a true and correct copy of relevant excerpts, with highlighting, from the Deposition of Jason Loehde, Individually, dated July 27, 2022.

9. Annexed hereto as **Exhibit H** is a true and correct copy of relevant excerpts, with highlighting, from the Deposition of Andrew Coppola dated May 11, 2022.

10. Annexed hereto as **Exhibit I** is a true and correct copy of relevant excerpts, with highlighting, from the Deposition of Thomas L. Ulry dated May 12, 2022.

11. Annexed hereto as **Exhibit J** is a true and correct copy of relevant excerpts, with highlighting, from the Deposition of Seabron Adamson dated November 8, 2022.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 6, 2023.

A handwritten signature in black ink, appearing to read "Michael D. Matthews, Jr.", written over a horizontal line.

Michael D. Matthews, Jr., Esq.